



Rule and Interpretive/Policy Statement Review Checklist
(This form must be filled out electronically.)

This form is to be used when the current version of the rule(s) has/have not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.

All responses should be **bolded**.

Document(s) Reviewed (include title): **WAC 458-20-263 Wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption**

Date last adopted/issued: **May 19, 1999 -- effective June 19, 1999**

Reviewer: **Gilbert Brewer**

Date review completed: **December 16, 2002**

Briefly explain the subject matter of the document(s):

The purpose of the rule is to explain the application of the retail sales tax and use tax exemptions available for machinery and equipment used directly in generating electricity using wind, landfill gas, or solar energy, and labor and services for installing that machinery. The exemption applies if the taxpayer develops a facility capable of generating at least two hundred kilowatts of electricity from such energy sources. The rule also provides a sample exemption certificate to be given sellers by purchasers to document the exempt purchase.

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

| YES | NO | |
|-----|----------|--|
| | X | Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request? |

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Need:

| YES | NO | |
|----------|----------|--|
| X | | Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?) |
| | X | Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document? |



| | | |
|----------|--|---|
| X | | Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.) |
| X | | Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.) |

Please explain.

Chapter 213, Laws of 2001 amended RCW 82.08.02567 & 82.12.02567 and made the following changes:

- **Added to the retail sales tax exemption the sales of machinery and equipment used directly in generating electricity by fuel cells (defined in the statute), but failed to enact a corresponding use tax exemption in RCW 82.12.02567;**
- **Eliminated the requirement that the Department specify "by rule" the exemption certificate to be provided to sellers by buyers;**
- **Reduced the amount of electrical generation required to qualify for the retail sales tax and use tax exemptions from 200 kilowatts to 200 watts; and**
- **Amended the definition of "used directly in generating electricity" to include machinery and equipment that "stores" electricity or that acts upon electricity to allow its "operation in parallel with electric transmission and distribution systems;"**
- **Extended the statutory expiration date from June 30, 2005 to June 30, 2009.**

3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

| YES | NO | |
|------------|-----------|---|
| | X | Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.) |
| | X | Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.) |
| | X | Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule? |
| | X | Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule? |



(b)

| YES | NO | |
|-----|----|---|
| | | Should this interpretive or policy statement be incorporated into a rule? |
| | | Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document? |
| | | Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document? |

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

4. Clarity and Effectiveness:

| YES | NO | |
|----------|----------|--|
| X | | Is the document written and organized in a clear and concise manner? |
| X | | Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.) |
| X | | Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?) |
| | X | Do changes in industry practices warrant repealing or revising this document? |
| | X | Do administrative changes within the Department warrant repealing or revising this document? |

Please explain.

The present rule is written and organized well but requires amendment to reflect statutory changes. Additionally, the rule should be amended to address the building of roads and multi-purpose buildings related to power-generating facilities.

5. Intent and Statutory Authority:

| YES | NO | |
|----------|----------|---|
| X | | Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.) |
| | X | Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no,” identify the specific statute and explain below. List all statutes being implemented in Section 9, below.) |
| X | | Is there a need to recommend legislative changes to the statute(s) being implemented by this document? |

Please explain.



RCW 82.32.300 and 82.01.060(2) provide authority for the Department to adopt the necessary rules.

The rule fails to reflect recent amendments to RCW 82.08.02567 & 82.12.02567 made by chapter 213, Laws of 2001 (described above).

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

| YES | NO | |
|-----|----------|---|
| | X | Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency? |

Please explain.

The Department of Revenue has exclusive authority to administer the retail sales and use tax exemptions in this area.

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

| YES | NO | |
|-----|----------|--|
| | X | Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer "yes" only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.) |

Please explain.

This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not already imposed by law.

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

| YES | NO | |
|----------|----------|---|
| X | | Does the document result in equitable treatment of those required to comply with it? |
| | X | Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community? |
| | X | Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community? |



Please explain.

This document currently results in the equitable treatment of those required to comply with it except that, as noted above, it is incomplete in that it does not reflect recent statutory amendments.

9. LISTING OF DOCUMENTS REVIEWED: Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

- **RCW 82.08.02567 (sales tax exemption)**
- **RCW 82.12.02567 (use tax exemption)**

The following statutes are implemented to the extent they apply to sales and uses of machinery and equipment for wind energy and solar electric generating facilities:

- **RCW 82.04.040 (Defines “sale”);**
- **RCW 82.04.050 (Defines “sale at retail” and “retail sale”);**
- **RCW 82.08.010 (Defines “selling price” to mean consideration);**
- **RCW 82.08.020 (Retail sales tax imposed); and**
- **RCW 82.12.020 (Imposes use tax)**

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Appeal Division Decisions (WTDs):

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

10. Review Recommendation:

- | | |
|--------------|---|
| <u> X </u> | Amend |
| _____ | Repeal/Cancel (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.) |
| _____ | Leave as is (Appropriate even if the recommendation is to incorporate the current information into another rule.) |
| _____ | Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.) |



Explanation of recommendation: Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, and court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, and court decisions).

The rule should be amended to reflect recent statutory changes and to address the issues noted above.

11. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

- _____ 1
- _____ 2
- _____ 3
- _____ 4